

SEP 04 2007

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FROM: Mark A. Charles

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Application No. : 09/811,875  
Inventor(s) : Bruce Albert Yeazell *et al.*  
Filed : March 19, 2001  
Art Unit : 3749  
Docket No. : 6805C  
Confirmation No. : 1033

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Mark A. Charles 513627  
Name of Appointed Agent Registration No.  
Signature of Appointed Agent

Case 6805C

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: :  
Yeazell, *et al.* : BEFORE THE BOARD OF APPEALS  
Serial No.: 09/811,875 : Group Art Unit: 3749  
Filed: March 19, 2001 : Examiner: Jiping LU  
Confirmation No.: 1033 :

For: BAGLESS DRY CLEANING KITS AND  
PROCESSES FOR DRY CLEANING

SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants appealed to the Board of Appeals by filing a Notice of Appeal, dated February 26, 2004 from the final rejection of Claims 1-25, as contained in the final Office Action dated August 26, 2003 (Paper No. 10) of the Primary Examiner. The Commissioner is hereby authorized to charge any necessary fees to Deposit Account No. 16-2480.

(1) REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company, a corporation of The State of Ohio, having a place of business at Cincinnati, Ohio 45202.

(2) RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

(3) STATUS OF CLAIMS

Claims 11-25 are pending and have been appealed. A copy of the appealed Claims 11-25 is attached as APPENDIX I.

(4) STATUS OF AMENDMENTS

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All amendments have been entered.

(5) **SUMMARY OF INVENTION**

The present invention relates to a bagless kit for dry cleaning fabrics (*See, e.g.*, Specification, page 5, lines 1-4) comprising one or more carrier sheets (*See, e.g.*, pages 8-11) that releasably comprise an amount of a liquid cleaning/refreshment composition (*See, e.g.*, pages 15-16) such that when fabrics are exposed to said liquid cleaning/refreshment composition within a heating vessel, in the absence of a bag, the fabrics are cleaned (*See, e.g.*, page 3, line 30 – page 4 line 6).

(6) **ISSUE**

- A. Are Claims 11-19, 21, and 23-24 unobvious over U. S. Patent No. 5,238,587, under 35 U.S.C. § 103(a)?
- B. Are Claims 11-19 and 23-24 unobvious over U. S. Patent No. 5,876,462, under 35 U.S.C. § 103(a)?
- C. Are Claims 20 and 22 unobvious over U. S. Patent Nos. 5,238,587, and 5,789,368, under 35 U.S.C. § 103(a)?
- D. Are Claims 20-22 unobvious over U. S. Patent Nos. 5,876,462, and 5,789,368, under 35 U.S.C. § 103(a)?
- E. Is Claim 25 unobvious over U. S. Patent Nos. 5,238,587, and 5,876,462, under 35 U.S.C. § 103(a)?

(7) **GROUPING OF CLAIMS**

Claims 11-25 stand or fall together.

(8) **ARGUMENT**

- A. Claims 11-19, 21, and 23-24 is unobvious over U. S. Patent No. 5,238,587, under 35 U.S.C. § 103(a).

Claims 11-19, 21, and 23-24 were rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 5,238,587 to Smith *et al.* ("Smith"). Applicant respectfully traverses the rejection.

On pages 2-3 of the Office Action under the rejections to Smith, it alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to eliminate the bag and its function in order to save costs, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. Applicant respectfully submits under

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Glade v. Walgreen Co., 50 U.S.P.Q. 407, 122 F.2d 306, that the elimination of an element, even where the same general result is achieved, would not preclude receiving a patent for a combination. The court said, at 122 F.2d page 309:

We find nothing in the statute, or in the decisions cited, which would preclude plaintiff from receiving a patent for a combination, even though it produced the same result as other such devices, if it produced that result with fewer elements that had theretofore been used or thought necessary. This is precisely what plaintiff did. Theretofore others had produced the same general result with five or more elements, whereas plaintiff produced the same general result more efficiently with three elements. It is not fair to say that Martin uses the same old elements as those before him, for there are at least two of the old elements used in prior devices which Martin does not use at all. In other words, he produces the same result in a more efficient and facile manner by making three of those old elements accomplish the same general result as five or more had theretofore done. (Emphasis added)

In the present invention, Applicant respectfully submits that the present invention retains the dry cleaning/refreshment function even though an element (i.e., the bag) is eliminated from the kit and/or the system and/or the method. Moreover, the present invention provides the additional benefits of not adding new wrinkles and/or removing existing wrinkles from the fabrics being treated. Thus, the present invention is non-obvious over Smith.

The Office Action argues that it would be obvious to one having ordinary skill in the art at the time the invention was made to eliminate the bag and its function in order to save costs, since it has been held that omission of an element and its function in a combination where the remaining element perform the same function as before involves only routine skill in the art. Applicants respectfully submit that by eliminating the bag, increased control of moisture and minimization of wrinkling can be obtained. See, e.g., Specification, page 4, lines 1-35. Thus, the elimination of the bag surprisingly provides a minimization of wrinkling. Further, the function of containing the cleaning/refreshment compositions is still performed, at least in part, by the heating vessel. Thus, Applicants respectfully submit that the removal of the bag encompasses more than simply removing an element. There is absolutely no disclosure or suggestion of such functions by Smith.

Based on the above arguments, the Office Action has failed to establish a prima facie case of obviousness. Therefore, Appellants respectfully submit that the presently claimed invention is unobvious and patentable over Smith under 35 U.S.C. §103(a).

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**B. Claims 11-19 and 23-24 are unobvious over U. S. Patent No. 5,876,462, under 35 U.S.C. § 103(a).**

Claims 11-19, and 23-24 were rejected under 35 U.S.C. §103 as being allegedly unpatentable over U.S. Patent No. 5,876,462 to Weller *et al.* ("Weller"). Applicant respectfully traverses the rejection.

On pages 2-3 of the Office Action under the rejections to Smith and Waller, it alleges that it would have been obvious to one having ordinary skill in the art at the time the invention was made to eliminate the bag and its function in order to save costs, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. Applicant respectfully submits under Glade v. Walgreen Co., 50 U.S.P.Q. 407, 122 F.2d 306, that the elimination of an element, even where the same general result is achieved, would not preclude receiving a patent for a combination. The court said, at 122 F.2d page 309:

We find nothing in the statute, or in the decisions cited, which would preclude plaintiff from receiving a patent for a combination, even though it produced the same result as other such devices, if it produced that result with fewer elements that had theretofore been used or thought necessary. This is precisely what plaintiff did. Theretofore others had produced the same general result with five or more elements, whereas plaintiff produced the same general result more efficiently with three elements. It is not fair to say that Martin uses the same old elements as those before him, for there are at least two of the old elements used in prior devices which Martin does not use at all. In other words, he produces the same result in a more efficient and facile manner by making three of those old elements accomplish the same general result as five or more had theretofore done. (Emphasis added)

In the present invention, Applicant respectfully submits that the present invention retains the dry cleaning/refreshment function even though an element (i.e., the bag) is eliminated from the kit and/or the system and/or the method. Moreover, the present invention provides the additional benefits of not adding new wrinkles and/or removing existing wrinkles from the fabrics being treated. Thus, the present invention is non-obvious over Waller.

The Office Action argues that it would be obvious to one having ordinary skill in the art at the time the invention was made to eliminate the bag and its function in order to save costs, since it has been held that omission of an element and its function in a combination where the remaining element perform the same function as before involves only routine skill in the art. Applicants respectfully submit that by eliminating the bag, increased control of moisture and

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minimization of wrinkling can be obtained. *See, e.g.*, Specification, page 4, lines 1-35. Thus, the elimination of the bag surprisingly provides a minimization of wrinkling. Further, the function of containing the cleaning/refreshment compositions is still performed, at least in part, by the heating vessel. Thus, Applicants respectfully submit that the removal of the bag encompasses more than simply removing an element. There is absolutely no disclosure or suggestion of such functions by Weller.

Based on the above arguments, the Office Action has failed to establish a *prima facie* case of obviousness. Therefore, Appellants respectfully submit that the presently claimed invention is unobvious and patentable over Smith under 35 U.S.C. §103(a).

**C. Claims 20 and 22 are unobvious over U. S. Patent Nos. 5,238,587, and 5,789,368, under 35 U.S.C. § 103(a).**

Claims 20 and 22 were rejected under 35 U.S.C. §103 as being allegedly unpatentable over Smith in view of U.S. Patent No. 5,789,368, to You *et al.* ("You"). Applicant respectfully submits that You does not address the deficiencies of Smith. As such, Applicants respectfully submit that the presently claimed invention is unobvious and patentable over Smith under 35 U.S.C. §103(a).

**D. Claims 20-22 are unobvious over U. S. Patent Nos. 5,876,462, and 5,789,368, under 35 U.S.C. § 103(a).**

Claims 20-22 were rejected under 35 U.S.C. §103 as being allegedly unpatentable over Weller in view of You. Applicant respectfully submits that You does not address the deficiencies of Weller. As such, Applicants respectfully submit that the presently claimed invention is unobvious and patentable over Weller under 35 U.S.C. §103(a).

**E. Claim 25 is unobvious over U. S. Patent Nos. 5,238,587, and 5,876,462, under 35 U.S.C. § 103(a).**

Claim 25 was rejected under 35 U.S.C. §103 as being allegedly unpatentable over Smith or Weller. Applicant respectfully submits that this rejection does not address the limitations or Smith or Weller, specifically the elimination of the bag. As such, Applicants respectfully submit that the presently claimed invention is unobvious and patentable over Smith under 35 U.S.C. §103(a).

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In view of the foregoing remarks, it is respectfully submitted that all claims are allowable.  
Accordingly, Appellants respectfully request reversal of all rejections.

Respectfully submitted,

YEAZELL ET AL.

By 

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September 4, 2007  
Cincinnati, Ohio

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## APPENDIX I

### Appealed Claims – Case 6805C

11. A bagless kit for dry cleaning fabrics comprising one or more carrier sheets that releasably comprise an amount of a liquid cleaning/refreshment composition such that when fabrics are exposed to said liquid cleaning/refreshment composition within a heating vessel, in the absence of a bag, the fabrics are cleaned.
12. The kit according to Claim 11 wherein said fabric are exposed to said liquid cleaning/refreshment composition in a heating vessel.
13. A method for cleaning fabrics in need of cleaning comprising:
  - a) placing the fabrics in a heating vessel;
  - b) placing a carrier sheet that releasably comprises an amount of a liquid cleaning/refreshment composition, such that when the fabrics are exposed to said liquid cleaning/refreshment composition the fabrics are cleaned, into the heating vessel; and
  - c) operating the heating vessel, in the absence of a bag, such that the carrier sheet releases the liquid cleaning/refreshment composition in the form of a liquid vapor within the heating vessel.
14. A system for dry cleaning fabrics comprising contacting fabrics in need of cleaning with a liquid cleaning/refreshment composition such that the fabrics are cleaned, wherein the fabrics and liquid cleaning/refreshment composition are contained within a mechanical heating vessel.
15. A method for cleaning fabrics in need of cleaning comprising:
  - a) placing the fabrics in a heating vessel;
  - b) introducing an amount of a liquid cleaning/refreshment composition into the heating vessel such that the fabrics are cleaned; and
  - c) operating the hearing vessel, in the absence of a bag, such that the liquid cleaning/refreshment composition cleans the fabrics.
16. A system for dry cleaning fabrics comprising an amount of a liquid cleaning/refreshment composition contained within a heating vessel, wherein fabrics present in the heating vessel are cleaned upon operating said heating vessel, in the absence of a bag.



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17. A method for dry cleaning fabrics in a heating vessel without adding wrinkles to the fabric articles comprising:

- a) placing the fabrics in a heating vessel;
- b) placing a carrier sheet that releasably comprises an amount of a liquid cleaning/refreshment composition, such that when the fabrics are exposed to said liquid cleaning/refreshment composition the fabrics are cleaned, into the heating vessel; and
- c) operating the heating vessel, in the absence of a bag, such that the carrier sheet releases the liquid cleaning/refreshment composition in the form of a liquid vapor within the heating vessel.

18. A method for cleaning fabrics in need of cleaning comprising:

- a) placing the fabrics in a heating vessel;
- b) exposing said fabrics within the heating vessel, in the absence of a bag, to an amount of liquid cleaning/refreshment composition for an amount of time such that the fabrics are cleaned.

19. A kit according to Claim 11 further comprising one or more Absorbent Stain Receiver Articles.

20. A kit according to Claim 19 wherein said one or more Absorbent Stain Receiver Articles is selected from the group consisting of TBAL, LBAL, MBAL, FAM and mixtures thereof.

21. A kit according to Claim 11 further comprising a pre-treating composition.

22. A kit according to Claim 21 wherein the pre-treating composition comprises butoxy propoxy propanol.

23. A kit according to Claim 11 wherein the one or more carrier sheets are supplied in a pouch which is substantially water tight and the carrier sheets are pre-saturated with the liquid cleaning/refreshment composition.

24. A kit according to Claim 11, wherein the liquid cleaning/refreshment composition comprises from about 90% to about 99.5% by weight water and from about 10% to about 0.5%

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by weight of materials selected from the group consisting of perfumes, emulsifiers, surfactants, solvents, preservatives and mixtures thereof.

25. A kit according to Claim 11 wherein the one or more carrier sheets have an aggregate surface area of from about 250 in<sup>2</sup> (1613 cm<sup>2</sup>) to about 1,000 in<sup>2</sup> (6452 cm<sup>2</sup>).